

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10652 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANOJBHAI ARJANBHAI NANDASANA

Versus

STATE OF GUJARAT AND OTHERS

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Appearance :

MR HR PRAJAPATI for the Petitioner

MR ND Gohil, AGP for respondent Nos.1 to 3

MR M.IQBAL A SHAIKH for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/07/2006

ORAL JUDGMENT

By filing this petition, the petitioner, who is detained under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), has

challenged his detention order on various grounds.

By an order dated 11-4-2006, the petitioner is detained under provisions of the aforesaid Act. With the detention order, the petitioner is also served with the grounds of detention. In the grounds of detention, it is alleged that the petitioner is having licence for the purpose of trading in Light Diesel Oil (LDO). Instead, the petitioner tried to deal with blue kerosene which is an essential article and which is required to be distributed through fair-price shops and other small traders. Even though the petitioner was not authorised to deal with the same, yet he has tried to deal with the same and tried to sell the same. The detaining authority after being subjectively satisfied, detained the petitioner by passing detention order under Sub-section (2) of Section (3) of the PBM Act.

Mr Prajapati, learned advocate for the petitioner submitted that against the order of detention a representation was made on 4.5.2006 to the Secretary as well as the Advisory Committee. It is submitted that the Central Government has delayed the decision on such representation for about 12 days as according to the petitioner the representation was made on 4th May 2006, which was sent to the Central Government by the State Government on 9th May 2006 and the same was received by the Central Government on 12th May 2006. However, more than 10 days' time was taken by the Central Government for deciding the same.

On behalf of the Central Government Shri A.K.Ganguly, Under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi has filed affidavit-in-reply. In paragraph 5 of the said reply it is stated that the representation dated 4th May 2006 of the detenu was received by the Central Government on 12th May 2006.

Another representation was also made by the advocate of the detenu on 6th May 2006 which was received by the Central Government on 15th May 2006. It is averred in the affidavit-in-reply that the said representation was ultimately rejected on 22nd May 2006 as 20th and 21st May 2006 were public holidays.

Learned counsel for the petitioner submitted that there is a delay in deciding the representation of the petitioner at the hand of the Central Government. He further submitted that even though the representation made by the advocate of the detenu was received by the Central Government on 15th May 2006, it was not decided till 19th May 2006. He further submitted that on this ground, the order of detention passed against the petitioner is required to be quashed. In support of his say, Mr Prajapati has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another**, reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

“9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was

submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen.”

It is not in dispute that the Central Government received the representation of the petitioner on 15th May, 2006, as Mr.M.Iqbal Shaikh, learned Counsel appearing for the Central Government has accepted the said aspect. However, ultimately, the representation of the petitioner was decided on 22nd May, 2006. Therefore, there is a delay of about 7 days in deciding the representation of the petitioner. There is no satisfactory explanation coming forward with regard to four day's delay in sending the representation to the concerned department. Thereafter also, except stating that there were two holidays in between, there is no other explanation coming forward for the rest of the days. Ultimately, the representation of the petitioner was decided on 22nd May, 2006. Therefore, there is a delay in deciding the representation of the petitioner and since, it is not satisfactorily explained, this petition is required to be allowed and the order of detention is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. The impugned order of detention dated 11.04.2006 passed by the District Magistrate, Jamanagar is set aside. The detenu – Manojbhai

Arjanbhai Nandasana is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.Majmudar, J.)

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